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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROSEVELT TURNER,

Defendant and Appellant.

E048136

(Super.Ct.No. FVA027757)

OPINION

APPEAL from the Superior Court of San Bernardino County. Ingrid Adamson Uhler, Judge. Affirmed.

Nancy Olsen, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Rhonda Cartwright-Ladendorf and Susan Miller, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant guilty of two counts of willful, deliberate, premeditated attempted murder (Pen. Code, §§ 664, subd. (a) & 187, subd. (a)).<sup>1</sup> In regard to both counts, the jury found true the following two allegations: (1) defendant personally used a firearm during the commission of the felonies (§ 12022.53, subd. (b)); and (2) defendant personally and intentionally discharged a firearm during the commission of the felonies (§ 12022.53, subd. (c)). As to count 1, the jury also found true the allegation that defendant personally and intentionally discharged a firearm during the commission of the felony, which proximately caused great bodily injury to a person other than an accomplice. (§ 12022.53, subd. (d).) The trial court sentenced defendant to state prison for a determinate term of 20 years. The trial court sentenced defendant to state prison for consecutive indeterminate terms of (1) 25 years to life (§ 12022.53, subd. (d)); (2) life with the possibility of parole (§§ 664, subd. (a) & 187, subd. (a)); and (3) life with the possibility of parole (§§ 664, subd. (a) & 187, subd. (a)). Defendant contends that substantial evidence does not support his conviction for willfully, deliberately, and with premeditation, attempting to murder Anthony P. We affirm the judgment.

### **FACTUAL AND PROCEDURAL HISTORY**

In August 2006, Antonio S. was 17 years old and resided in an apartment complex in Fontana. Slightly before midnight on August 26, 2006, Antonio was sitting outside his apartment smoking a cigarette with two or three friends, including

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<sup>1</sup> All further statutory references will be to the Penal Code unless otherwise indicated.

Anthony P. At approximately 12:40 a.m., Antonio, Anthony, and the other friend(s), were approached by a group of about 10 young men. Defendant was among the group of men.

Defendant approached Antonio, who was sitting down. Antonio had a cigarette tucked behind his left ear. Defendant said to Antonio, “Gimme your cigarette.” Antonio said that it was his last cigarette, but he would share it with defendant. Defendant asked Antonio, “Do you gang bang?” Antonio replied, “No.” Defendant responded, “Well, it looks like you [do].” Defendant reached for the cigarette tucked behind Antonio’s ear. Antonio moved his head back because he thought defendant was about to hit him.

Defendant came towards Antonio, and Antonio stood up. Anthony was less than one foot away from Antonio. Defendant stood face-to-face with Antonio, and the two argued. Antonio said to defendant, “Are you really trippin’ over a cigarette?” The group of young men began walking away, and approximately 10 seconds later defendant followed the group. When defendant was about 12 feet away from the victims, he turned around and began shooting.

Antonio recalled hearing approximately 12 gunshots. Defendant shot the gun rapidly, and Antonio was unable to get away. Antonio was shot “eight or nine times.” During the gunfire, Antonio fell to the ground. When Antonio fell, he began screaming. Antonio’s dad came outside to help Antonio. Police and paramedics responded to the incident. Antonio momentarily died during the ambulance ride, but was resuscitated by the paramedics. Antonio was hospitalized until February 15, 2007—approximately six

months. Antonio was unconscious in the hospital for several months. After Antonio regained consciousness, he began suffering from gangrene in his legs due to the gunshot wounds preventing blood from properly circulating around his legs. Ultimately, both of Antonio's legs were amputated.

Antonio also suffered gunshot wounds to his left testicle, chest, and stomach. Antonio had approximately 50 surgeries on his chest and abdomen areas after being shot, such as a skin graft, a tracheotomy, and bullet removal.

Antonio was standing during the gunfire; Anthony was next to Antonio during the gunfire, but Anthony was sitting down. Anthony was grazed by a bullet. Anthony's wound took approximately three months to heal.

## **DISCUSSION**

Defendant contends that the evidence supporting his conviction for the willful, deliberate, premeditated attempted murder of Anthony does not meet the substantial evidence standard. Specifically, defendant contends that substantial evidence does not support the findings that (1) he created a "kill zone" or possessed a concurrent intent to kill Anthony; and (2) he acted willfully, deliberately, and with premeditation. We disagree.

"In reviewing a sufficiency of evidence claim, the reviewing court's role is a limited one. "The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the

judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]” [Citations.]” (*People v. Smith* (2005) 37 Cal.4th 733, 738-739 (*Smith*).)

A. MENTAL STATE

“The mental state required for attempted murder has long differed from that required for murder itself. Murder does not require the intent to kill. Implied malice—a conscious disregard for life—suffices. [Citation.]’ [Citation.] In contrast, ‘[a]ttempted murder requires the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing.’ [Citations.]” (*Smith, supra*, 37 Cal.4th at p. 739.)

The “kill zone” theory provides “that a shooter may be convicted of multiple counts of attempted murder . . . where the evidence establishes that the shooter used lethal force designed and intended to kill everyone in an area around the targeted victim (i.e., the ‘kill zone’) as the means of accomplishing the killing of that victim. Under such circumstances, a rational jury could conclude beyond a reasonable doubt that the shooter intended to kill not only his targeted victim, but also all others he knew were in the zone of fatal harm. [Citation.]” (*Smith, supra*, 37 Cal.4th at pp. 745-746.) Stated differently, “the fact [that a] person desires to kill a particular target does not preclude [a] finding that the person also, concurrently, intended to kill others within . . . “the kill zone.”” [Citation.] For example, if a person placed a bomb on a commercial airplane intending to kill a primary target, but also ensuring the death of all the passengers, the

person could be convicted of the attempted murder of all the passengers, and not only the primary target. [Citation.]” (*People v. Stone* (2009) 46 Cal.4th 131, 137.)

The evidence reflects that Antonio and Anthony were next to each other at the time of the shooting. Defendant used a flurry of bullets as the means of killing Antonio. Antonio was standing, and Anthony was sitting down. Antonio was shot in both legs. In one leg, Antonio was shot twice below the knee—in his foot and shin. A reasonable juror could infer from the foregoing evidence that defendant’s flurry of shots was intended to kill not only Antonio, but also Anthony, who was sitting in the zone of fatal harm. The inference is further supported by the evidence that Anthony was grazed by a bullet. In sum, a rational jury could conclude beyond a reasonable doubt that defendant intended to kill Anthony. Therefore, we conclude that substantial evidence supports the jury’s verdict.

Defendant asserts that he did not argue with Anthony and he only grazed Anthony, therefore, it is reasonable to infer that he did not intend to kill Anthony. Defendant is correct that different inferences may be drawn from the evidence. As noted *ante*, the evidence could support the inference that defendant intended to kill Anthony. The evidence could also support the inference that defendant only intended to shoot Antonio, but grazed Anthony by mistake. These contrary inferences are inconsequential to our analysis; however, because our authority is limited to determining whether “on the entire record, there is *substantial evidence*, contradicted or uncontradicted, which will support the finding of fact.” (*People v. DeCosse* (1986) 183 Cal.App.3d 404, 408.) We have concluded that a reasonable trier of fact could infer that

defendant intended to kill not only Antonio, but also Anthony, who was in the zone of fatal harm. Accordingly, we must affirm the judgment.

Next, defendant asserts that this case is distinguishable from other “kill zone” cases because defendant did not use lethal force designed and intended to kill everyone in the area around the targeted victim.

Lethal force establishing a kill zone was found where the defendants shot at two occupied houses. (*People v. Bland* (2002) 28 Cal.4th 313, 330.) The court of appeal affirmed attempted murder convictions as to all 11 victims in the two houses, even though the defendants may have targeted only one person in each house, because the jury could draw a reasonable inference of an intent to kill all 11 people from “the placement of the shots, the number of shots, and the use of high-powered, wall-piercing weapons.” (*Ibid*; see also *People v. Stone, supra*, 46 Cal.4th at p. 140 [discussing the appellate court opinion].)

In the instant case, defendant turned towards the victims and began rapidly shooting his gun. Defendant shot Antonio all over the length of his body—his legs, abdomen, and chest. Defendant grazed Anthony. Antonio recalled hearing approximately 12 shots. Anthony recalled hearing at least nine shots. Given the flurry of bullets sprayed in the direction of Antonio, a juror could reasonably infer that defendant intended to kill Antonio while concurrently intending to kill Anthony, who was in the immediate area around the targeted victim. In sum, we find defendant’s argument unpersuasive.

B. PREMEDITATION

Defendant contends that the evidence supporting the finding that he acted willfully, deliberately and with premeditation, when attempting to murder Anthony, does not meet the substantial evidence standard. We disagree.

“[T]he crime of attempted murder is not divided into degrees. [Citation.] The prosecution many seek a jury finding that an attempted murder was ‘willful, deliberate, and premeditated’ for purposes of sentence enhancement [Citations.]” (*Smith, supra*, 37 Cal.4th at p. 740.) ““‘Deliberation’ refers to [a] careful weighing of considerations in forming a course of action; ‘premeditation’ means thought over in advance.

[Citations.] “The process of premeditation and deliberation does not require any extended period of time. ‘The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly.’ [Citations.]” [Citation.]” (*People v. Young* (2005) 34 Cal.4th 1149, 1182.)

After arguing with Antonio about the cigarette, defendant left to follow the group of young men. Defendant turned his back to Antonio and Anthony as he walked away. As defendant walked away, Antonio believed that the incident was over. When defendant was approximately 12 feet from the victims, he turned around and began shooting the victims. A trier of fact could reasonably infer from the foregoing evidence that defendant considered and weighed the idea of shooting the victims while he walked the 12 feet, because at that point, the arguing had ended, and defendant was free to think



and deliberate about his next acts. Accordingly, substantial evidence supports the jury's findings.

Defendant contends that there is no evidence that he planned to kill Anthony, because he did not argue with Anthony. As set forth *ante*, the "kill zone" theory provides "that a shooter may be convicted of multiple counts of attempted murder . . . where the evidence establishes that the shooter used lethal force designed and intended to kill everyone in an area around the targeted victim (i.e., the 'kill zone') as the means of accomplishing the killing of that victim." (*Smith, supra*, 37 Cal.4th at pp. 745-746.) Defendant rapidly fired nine to twelve bullets in the direction of the victims. The bullets struck the length of Antonio's body, including Antonio's legs and foot. Anthony was sitting next to Antonio, who was standing. One bullet grazed Anthony. Consequently, the evidence reflects that defendant used a flurry of bullets designed to kill Antonio and everyone in the area immediately around Antonio, i.e., Anthony. Accordingly, there is evidence that defendant planned to kill Anthony. Therefore, we are not persuaded by defendant's argument.

Next, defendant contends that he did not have a motive to kill Anthony. It appears that this argument is essentially the same as defendant's contention that the evidence does not support the finding that he planned to kill Anthony because he did not argue with Anthony. We have already analyzed that argument *ante*, therefore, we do not address it again.

Defendant contends that the evidence reflects that Anthony was an unintended victim, and therefore, defendant did not willfully and deliberately attempt to murder

Anthony. As discussed *ante*, within our analysis of defendant's mental state contention, contrary inferences may be drawn from the evidence. However, a jury could reasonably infer that defendant intended to shoot at Anthony when he fired a flurry of bullets in the direction of the victims. Accordingly, we are not persuaded that the evidence reflects that Anthony was an accidental victim, and therefore, we find defendant's argument unpersuasive.

### **DISPOSITION**

The judgment is affirmed.

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/s/ MILLER

J.

We concur:

/s/ McKINSTER

Acting P. J.

/s/ KING

J.